IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1511 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

Legal Heirs of late Shri JAGDISHCHANDRA BHULABHAI PATEL

Versus

CHHIMNIBEN KESHAVBHAI PATEL

Appearance:
Mr.DD Vyas, Sr. Advocate with
MR UTPAL M PANCHAL for Petitioner.
MRS KETTY A MEHTA for Respondents No. 1-5
RULE SERVED for Respondent No. 6-8
Ms. Kalpana Brahmbhatt and
Mr. Yatin Soni as interveners.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 11/10/2002

CAV JUDGEMENT

The present Civil Revision Application (CRA) is

filed against an order passed by the learned District Judge, Surat, in Civil Miscellaneous Appeal No. 58 of 1992 on 1.12.2001 reversing the order passed by the ld. 3rd Joint Civil Judge (JD), Surat, on 25.2.1992 in an application below Exhs. 5 and 24 filed by the original-plaintiffs and in application below Exh. 59 filed by the original-defendant No.4 in Regular Civil Suit No. 906 of 1991. By virtue of that order, the injunction prayed for by the application below Exh. 24 was granted and the defendants No. 1 to 4 were restrained from entering or trespassing into the disputed property till the final disposal of the suit. The present Civil Revision Application is filed by the original-defendant No.4 who was not initially joined as a party in the suit but subsequently under an order passed below Exh. 23,the present petitioner was joined as defendant No.4 in the said suit. The present respondents No. 1 to 5 are the original-plaintiffs and they have filed Regular Civil Suit No. 906 of 1991 in the Court of learned Civil Judge (SD), Surat against the present respondents No. 6 to 8 who are the original-defendants No. 1 to 3 in the said suit. The original-plainiffs have filed the said suit against the defendants for a declaration and injunction on the ground that land bearing Revenue Survey No. 70 and 71 of Block No. 89 admeasuring 9510 sq.meters is of HUF property, and Keshavlal Kanjibhai was the Manager of HUF. As per the averments made in the plaint, the property was purchased under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, in the name of Keshavlal Kanjibhai as Manager and Karta of his family. Keshavlal expired on 30.12.1987 and the plaintiffs were the legal heirs of Keshavlal Kanjibhai and they were in possession of the disputed property and were cultivating the said land. It is also the case of the original-plaintiffs that even if the property was considered to be the individual property of Shri Keshavlal Kanjibhai, in that case also as legal heirs of late Shri Keshavlal Kanjibhai, the plaintiffs were entitled to protect their rights and the defendants were not in any relation with the plaintiffs and hence they have no right to disturb the possession of the plaintiffs. However, the defendants were acting in collution and wanted to disturb the possession of the plaintiffs and to protect their possession, the plaintiffs have filed the above suit against the defendants for declaration and injunction.

2. In the said suit, the plaintiffs moved an application Exh. 5 against the defendants seeking temporary injunction against them. Application Exh. 14 was preferred by the defendant No.1 against the

plaintiffs. Application Exh. 24 was preferred by the plaintiffs against the defendant No.4 and application Exh. 39 was preferred by the defendant No.4 against the plaintiffs. The learned trial Judge has rejected the application Exh. 5 refusing to grant interim relief against the defendants No. 1 to 3. The ld. trial Judge has also rejected the application Exh. 24 refusing to grant injunction against the defendant No.4. The ld. trial Judge has also rejected the application Exh. 14 preferred by the defendant No.1 against the plaintiffs. However, the ld. trial Judge has granted the application Exh. 39 preferred by the defendant No.4 against the plaintiffs and the plaintiffs were directed not to interfere with or not to take away any possession without due process of law till the final disposal of the suit. The defendant No.4 was also directed not to transfer the said property to others pending the disposal of the suit so as to avoid multiplicity of the proceedings. The ld. trial Judge, vide his order dated 25.2.1992 had therefore disposed of the applications Exh. 5 and 14, and 24 & 39.

3. Being aggrieved by the said order, original-plaintiffs have filed Civil Misc. Appeal No. 58 of 1992 before the Court of ld. District Judge at Surat, who vide his order dated 1st December 2001 allowed the said appeal and set aside the order passed below Exh. 5, Exh. 24 and Exh. 39 by the ld. 3rd Joint civil Judge (SD), Surat in Regular Civil Suit No. 906 of 1991. The learned District Judge has also quashed and set aside the order passed by the ld. trial Judge in an application below Exh. 39 filed by the defendant No.4. By virtue of that order, the interim injunction prayed for in applications Exh. 5 and 24 by the plaintiffs in the above suit was granted and the same was ordered to remain in operation till the final disposal of the suit. The defendants No. 1 to 4 were restrained from entering or trespassing into the disputed property till the final disposal of the suit. It is this order, which is under challenge in the present CRA filed by the original-defendant No.4 in the Regular Civil Suit No. 906 of 1991.

4. This CRA was admitted and Rule was issued by this Court on 21.3.2002 and the interim relief granted by the lower court was ordered to be continued till further orders. The said interim relief was continued till 1.10.2002. However, it was vacated on that day, but on the basis of the statement made on behalf of the respondents' ld. advocate, the said interim relief continued till this date.

5. Before this Court could take up the matter for hearing of the Rule, a preliminary objection was raised on behalf of Mrs. KA Mehta, ld. advocate appearing for the respondents No. 1 to 5 that the present Revision Application is not maintainable in view of the amendment made in Section 115 of the Code of Civil Procedure. The impugned order is passed by the ld. District Judge in an appeal against the interim order passed by the ld. trial Judge and as per the Proviso to Section 115 of the Code of Civil Procedure, this Court, while exercising its revisional jurisdiction shall not vary or reverse any order made or deciding the issue, in the course of the suit or other proceeding except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. She has further submitted that the impugned order is passed in the course of the suit and even if the order is made in favour of the petitioner or even if the present revision application is allowed in favour of the petitioner, the suit which is pending before the trial court, i.e., Regular Civil Suit No. 906 of 1991 would not have been finally disposed of as the prayer made in the suit is with regard to the declaration and injunction and the applications Exh. 5, 24 and 39 are seeking merely interim orders so, in any case, the suit remains pending even if the impugned order is reversed.

5. In support of her contention, Mrs. KA Mehta further submitted that this court in its judgment dated 24.7.2002 in the case of Parakramsinh Vikramsinh Jadeja vs. Yogi Corporation, 2002(3) GLR 2040, had an occasion to examine a Revision Application in the light of the amended provisions of Section 115(1) and its Proviso of the Civil Procedure Code and effect of repeal and savings provisions contained in Section 32 of the Code of Civil Procedure (Amendment) Act, 1999. Mrs. KA Mehta has further submitted that the amended provisions are equally applicable to the pending revisions in view of the decision of this Court in the case of Gulbhai K. Achara vs. Natraj Theatre (CRA No. 1258 of 2001) decided on 13.9.2002. She has, therefore, submitted that in view of the provisions contained in Section 115 of the CPC and in view of these two decisions of this Court, the present CRA is not maintainable and the same is therefore required to be rejected.

6. However, on the other hand, Mr. DD Vyas, ld. Senior Advocate along with Mr. Utpal Panchal, ld. advocate for the petitioner submits that in the aforesaid two decisions, certain points were not either urged or

were not considered by the Court and binding decisions of Hon'ble Supreme Court were either not cited or not considered by the court and he therefore requested to permit him to address the court on the issue regarding maintainability of the revision petition. Mr.Vyas has submitted that the right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised by him when any order adverse to him is pronounced. Such right is to be governed by the law prevailing on the date of institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. He has further submitted that the institution of the suit carries with it all rights of appeal than in force and are preserved to the parties thereto till the rest of the career of the suit. Such vested right of appeal can be taken away only by subsequent enactment,if it so provide expressly or by necessary implication and not otherwise. He has, therefore, submitted that in the present case, the suit was instituted in the year 1991 and hence the right of appeal was vested in the parties thereto on that date and was to be governed by the law as it provided on that date, that is to say, on that date the parties acquired their rights, if unsuccessful to go up in appeal from the subordinate court to the High Court and from the High Court to the Supreme Court. The amended provision of Sec. 115 does not take away this vested right of the petitioner as there is no express provision nor there is any necessary implication suggesting that such right is taken away by the Legislature. In support of his contention, he has relied on the decision of the Hon'ble Supreme Court in the case of Garikapati Veeraya v. N. Subbiah Choudhry and other - AIR 1957 SC 540. This decision has not been considered by this Court while delivering the judgment in the case of Parakramsinh Vikramsinh Jadeja vs. Yogi Corporation, (Supra).

7. Mr. Vyas has further submitted that though the aforesaid decision is in respect of appeals to be filed against the orders passed by the courts below, the same is equally applicable to the revisions too and for that purpose he relied on the decision of the Hon'ble Supreme Court in the case of Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat - AIR 1970 SC Page 1, wherein it is held that "The right of appeal is one of entering a superior court and invoking its aid and interposition to redress the error of the Court below. Two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power on the part of the former to review

decisions of the latter. When the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider, and larger sense."

8. Mr. Vyas has further relied on the decision of this Court in the case of Sursangji Ambaram & Ors.v. State of Gujarat & Anr., - (2002) 43(2) GLR Page 1462, wherein it is held that a revisional jurisdiction of the Deputy Collector under Sections 74 and 76-A (retrospectively) of the Tenancy Act, both of which are basically and fundamentally the appellate jurisdiction of the Collector over the decision of the Mamlatdar and Agricultural Lands Tribunal. The Gujarat Revenue Tribunal was, therefore, right in coming to the conclusion that once the order dated 4.4.1995 of the Deputy Collector in revision under Sec. 76A of the Act (modifying the Mamlatdar's order of 1960) was set aside by the Tribunal, (albeit by the consent of parties) on 28.2.2000, it was not open to the Collector or Deputy Collector to entertain the appeal and exercise the powers of appeal under Sec. 74 of the Act against the same order of the Mamlatdar and A.L.T. passed in 1960."

9. The second limb of the argument of Mr. Vyas is that Section 32(2) of the Code of Civil Procedure (Amendment) Act, 1999 makes it abundantly clear that notwithstanding the provisions of this Act have come into force or repealed under sub-section (1) has taken effect, the same is without prejudice to the generality of the provisions of Section 6 of General Clauses Act, 1897. The provision of Section 115 of the Principal Act, as amended by Section 12 of this Act, shall not apply to or affect any proceeding for revision which may result into taking away of any vested right already accrued. Mr. Vyas has, therefore, submitted that the repeal and savings provisions contained in Section 32 of the Amendment Act of 1999 should be construed in the light of the provisions conained in Section 6 of the General Clauses Act. He has, therefore, submitted that the Amending Act would not affect any right which is already accrued and acquired under the old provisions and it would also not affect any legal proceeding or remedy in

respect of any such right which is already accrued at the time when the suit was instituted. He has further submitted that as per the provisions contained in Section 6(1)(c) and (e) of the General Clauses Act, the right which is already accrued cannot be taken away and even if it is sought to be taken away, the same can be done by the express provision or by necessary implication. There is neither any express provision nor any necessary implication in Section 32(2)(i) of the Amending Act of 1999 as it merely contains what is saved but what is not saved does not necessarily lead to a presumption that the right which is already accrued is taken away by the said provision. He has further submitted that while interpreting the said clause (i) of Section 32(2) of the said Act, it is difficult to presume that there is a different intention of the Legislature to take away the right which is already accrued or to put it differently the said provision is intended to be made applicable to the pending revisions also. Mr. Vyas has further submitted that if on the basis of sub-clause (i) of Section 32(2) of the Amending Act, 1999 it is held that the said sub-clause is applicable to the pending revisions also it would destroy the very fabric of the provisions contained in Section 6 of the General Clauses Act. Lastly, he has submitted that if any statute impairs the vested right of the litigant some reasonable restrictions should always be imposed and while interpreting the provisions affecting the vested right of the litigant, the interpretation should be made in such a way that it would not affect the vested right of the litigant. On the basis of these submissions, Mr.Vyas has vehemently submitted that the earlier two decisions of this Court have not taken into consideration these aspects of the matter and hence this Court should either entertain the revision on merits or in the alternative, this matter should be referred to a Division Bench.

10. Here at this stage, it is necessary to take note of the fact that Mr. Yatin Soni, ld. advocate has appeared as an intervener in the matter and submitted that this Court is having an exclusive jurisdiction so far as the orders passed by the authorities below and simply because a different nomenclature of revision is given to a particular proceeding and despite gross injustice is done to the petitioner as a result of material irregularity or illegality committed by the courts below, this Court should not shut its eyes by holding that the revision is not maintainable in view of the amended provisions. He has further submitted that once the matter is admitted prior to 1st July 2002 and it is pending for final disposal, the party should not be

relegated to avail of any other alternative remedy. In support of this proposition, he has relied on the decision of this Court in the case of Mahendrakumar Veerabhai Makwana v. State of Gujarat and Another - 1991 (1) GLH Page 1; and L. Hirday Narain v. Income-Tax Officer, Bareilly, (1970) 78 ITR 26 (SC).

11. On the other hand, Mrs. KA Mehta, ld. advocate for the respondent and Ms. Kalpana Brahmbhatt, ld. advocate appearing as an intervener have strongly submitted that all these points were taken into consideration by this Court in its earlier two judgments and since the issue is concluded there is no necessity to take any different view in the matter. As far as the accrual of right from the date of the institution of the suit is concerned, this Court has observed in Parakramsinh Vikramsinh Jadeja's case (Supra) that it has also been contended that the right of the party would be crystalised on the date of the filing of the suit as per the laws as it may stand on the date of the institution of the suit. It is further observed that at the same time, it is also true that if any procedural law is amended then the amendment can take effect even retrospectively also and an amendment can be made applicable to the pending provisions by express provisions or by necessary implication. When a law is enacted, ordinarily, it would apply prospectively but by making appropriate provision the amendment can be made applicable retrospectively to the pending proceeding also by making express provision or by making necessary implication. This Court has further held that the intention of the Parliament goes to suggest that the Amending Act of 1999 will apply to the appeals, which may have been filed before 1.7.2002 but which have been pending for admission as on 1.7.2002. This provision clearly negatives the argument that a right of party to appeal, as it stood on the date of institution of the suit, will continue to be with such a party even after the Amending Act 1999, has been brought into operation.

12. It is further submitted that the points raised by Mr. Vyas in the present Revision Application were also considered by the Bombay High Court in its recent judgment in the case of Rajabhau, S/o. Mahadeorao Rahate vs. Dinkar, S/o Shantaram Ingole, 2002(3) Maharashtra Law Journal, 921, wherein it is held that the provisions of Section 115 of the Code of Civil Procedure, 1908 as amended by the Code of Civil Procedure (Amendment) Act of 1999 with effect from 1.7.2002 are applicable from that date to all proceedings pending in the High Court under Section 115 of the Civil Procedure Code and all revision

applications were pending as on 1.7.2002 or filed thereafter have to be dealt with strictly in accordance with the provisions of Section 115 with effect from 1st July 2002. No Revision Application against an interlocutory order will be entertainable even if the order is made prior to 1st July 2002 as moving the High Court under Section 115 is not a right. While arriving at this conclusion, the Bombay High Court has relied on the decisions of Hon'ble Supreme Court reported in AIR 1974 SC 1126, AIR 2000 SC 811, and AIR 1958 SC 915. The Bombay High Court has further held that Section 115 of the CPC, right from its inception, is a procedure prescribed and provided by the Code for exercise of the power of superintendence by the High Court being the court subordinate to it. There is no right in a litigant to move an application under Section 115 of the Civil Procedure Code for exercise of the jurisdiction mentioned therein. It being not a right, there is no question of it being saved by recourse to provision of Section 6 of the General Clauses Act, 1897. The provisions of Section 32(2)(i) do not either by direct legislation or by necessary implication any such proceeding being affected by the amendment with effect from 1.7.2002. For this purpose, the Bombay High Court has relied on the decision of the Supreme Court in the case of Smt. Gangabhai v. Vijaykumar and others - AIR 1974 SC 1126; and K. Eapen Chako vs. The Provident Investment Company (P.) Limited, = AIR 1976 SC 2610.

13. It has been further submitted that even this Court has also considered in great length in the case of Gulbhai K.Achara Vs. Natraj Theatre (Supra) the effect of amended provisions on the pending Revision Applications and also the effect of repeal and savings provisions contained in Section 32(2) of the Amending Act of 1999, vis-a-vis Section 6 of the General Clauses Act. It is further submitted that the legislative intent can be gathered from other analogous provisions. For that purpose, the attention of this Court was drawn to clause (o) of Section 97 of the Code of Civil Procedure (Amendment) Act, 1976 wherein it is stated that the amendment of Section 115 of the Principal Act and Section 43 of this Act shallnot apply to or affect any proceeding or revision which had been admitted, after preliminary hearing, before the commencement of the said Section 43, and every such proceeding for revision shall be disposed of as if the said Section 43 had not come into force. In sub-clause (i) of Section 32(2) of the Amending Act of 1999 does not contain the same phraseology namely "any proceeding for revision which had been admitted, after a preliminary hearing, before the commencement of the said

Section 43". It specifically contains "Any proceeding for revision which had been finally disposed of". It, therefore, suggests that the pending revisions are not saved by virtue of the provisions contained in sub-clause (i) of Section 32(2) of the Amending Act of 1999. It is further submitted that there is no vested right so far as the revision is concerned. Under Section 115 of the Civil Procedure Code the discretion is given to the High Court and the High Court may or may not intervene in the order passed by the authorities below. It has been further submitted that in Section 96 as well as in Section 100 which deal with appeals, the word "shall" is used whereas in Section 115, the word "may" is used. Mrs. Mehta has further relied on the decision of the Hon'ble Supreme Court in the case of Shri M.L. Sethi v. Shri R.P. Kapur - AIR 1972 SC 2379, wherein it is held that "The jurisdiction of the High Court under S. 115 of C.P.C. is a limited one. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. Section 115 empowers the High Court to satisfy itself on three matters (a) that the order of the subordinate court is within its jurisdiction ; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegaly, or in material irregularity by committing some error of procedure in the course of the trial which is so material that it may have affected the ultimate decision. If the High Court is satisfied on these three matters it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law having such relation or connection. An erroneous decision on the question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under S. 115."

14. In nutshell, it was submitted by both the ld. advocates appearing for the respondents as well as an intervener that the issue regarding the maintainability of the revision application is squarely covered by the two decisions of this Court as well as by the decision of the Bombay High Court and hence no different view is required to be taken in the present matter and there is no need to refer the present matter to the Division Bench.

15. I have considered the rival submissions of the parties and also the authorities cited by both the sides. I am of the view that the issue is wholly covered by the earlier two decisions of this Court and even the arguments canvassed in the present petition were substantially dealt with in the earlier decisions. Though the authorities cited by Mr. Vyas in the present petition do not find place in the earlier two decisions, the said authorities were elaborately considered by the Bombay High Court and thereafter taken the view that the CRA is not maintainable. In Parakramsinh Vikramsinh Jadeja's case (Supra), this Court has observed as under :

"In my reading of newly amended section 115 of Code, the court will be required to examine a Revision Application in the following order;

(1) It has to first consider as to whether the impugned order is a non appealable order since an appealable order cannot be carried in a Revision Application which is a pre condition of applicability of Section 115 of the Code.

(2) Whether there is a "case decided", since it is also a pre condition for application of Section 115 of the Code. If there is no "case decided" then it would not be open to the Court exercising srevisional jurisdiction ato exercise the same.

(3) Whether the revisionist show that three grounds mentioned at Clause (a), (b) and (c) or any of them mentioned in Sub Section (1) of Section -115 exists. The reason is that a Revision Application can be entertained only when at least one of those requirements or ingredients is present. If none is present, Revision Application cannot be entertained. Therefore, it would be necessary for the Court to examine whether the three grounds or any of them is in existence.

(4) Whether the order impugned in a Revision Application is an order passed during the course of a suit or during the course of other original independent civil proceeding.

(5) Whether the impugned order, if it had been made in favour of the revisionist, would have finally disposed of the suit or other

proceeding.

Unless the above exercise is undertaken it would not be possible to properly apply the amended provision of Section 115 of the said Code.

If the said exercise is undertaken in the present mater then let us assume for the sake of argument that there is a case decided, there is non appealable judmgent/order, there is existence of the ingredients mentioned at Cluase(a), (b) and (c) of Sub section (1) of Section-115 of the Code and that the order in question is an order passed during the course of the suit. Then also the last requirement that the order should be such as would have finally disposed of the suit if it had been passed in favour of the revisionist is missing.

As said above, the judgments and orders are such which if would have been passed in favour of the present Revisionist then also such a judgment or order would not have finally disposed of the suit in question. Therefore, the last requirement cannot be said to have been satisfied and, therefore, Revision would not be maintainable."

16. With regard to the petitioner's contention that the amended provisions do not apply to the present CRA as it is filed prior to 1.7.2002 and since it is already admitted and vested right is created in favour of the petitioner, the same cannot be thrown overboard only on the ground that the same is not maintainable in view of the amended provisions contained in Section 115 of the Civil Procedure Code. To consider this argument, it is necessary to refer to the following observations :

"To consider this argument, it is necessary to have a look at the provisions contained in section 32 of the Amending Act of 1999. Sub-clause(i) of sub-section(2) of Section 32 of the Amending Act of 1999 very clearly says that the provision of Section 115 of the Principal Act as amended by Section 12 of this Act shallnot apply to or affect any proceeding for Revision which had been finally disposed of. It, therefore, clearly indicates that barring the Civil Revision Applications which may have been

disposed of before 1.7.2002, all other Revision Applications would be governed by the new provision contained in S. 115 as amended by the Amending Act of 1999."

17. With regard to the petitioner's contention that the amended provisions contained in Section 115 of the CPC affects the substantive right of the petitioner and hence the same cannot be applied retrospectively, it is to be noted that this aspect was also considered by this Court in Parakramsinh's case where the following observations were made:

"For this purpose, we have to read Sub Section

"For this purpose, we have to read Sub Section (2) of Section-32 of the Amending Act. It is required to be considered that Clause (f) of sub-section (2) of Section-32 makes it clear that the provision of Section-96 of the principal Act, as amended by Section-9 of Amending Act, shall not apply to or affect any appeal from the original decree, which had been admitted before commencement of Section-9 and admitted appeals shall be dealt with as if Section-9 has not come into force. This shows that the appeal which has been admitted before 1.7.2002 has been expressly saved from the operation of the Amending Act, 1999. Similar provision has been made in cluase(h) to sub-setion (2) of Section-32 of the Amending Act, 1999, under which it has been clearly clarified that the provision of Section-102 of the principal Act,as substituted by Section-11 of the Amending Act, shall not apply to or affect any appeal which had been admitted the commencement of sec. 9 and every such appeal shall be disposed of as if Section-11 had not come into force. This would again mean that the appeals which may have been admitted before 1.7.2002 hae been saved by the provision made in Clause (h) to Sub Section (2) of the Section-32 of the Amending Act. Similar provisions are found in other clauses to Sub Section (2) of Section-32 of the Amending Act, 1999. This would show that Parliament has demostrated that some provisions of the Amending Act, 1999 will not affect certain proceedings which have reached to a particular stage."

18. With regard to the petitioner's argument that sub-clause (i) of Section 32(2) of the Amendment Act, 1999, does not take away the substantive right of the petitioner in view of the provisions contained in Section 6 of the General Clauses Act, it is observed by this Court in the case of Gulbhai K. Achara (Supra) as under:

> 9. Section 6 of the General Clauses Act makes it clear that whenever there is repeal of an enactment, the consequences laid down in S. 6 will follow unless a different intention appears. In the case of a simple repeal, there is scarcely any room for the expression of contrary opinion. But where the repeal is followed by fresh legislation on the same subject, the Court would have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. Section-6, however, doesnot intend that even when an Act is repealed and the new legislation manifests an intention incompatible with or contrary to the provision of section under the new provision, still the old provisions must have their way and wold prevail notwithstanding that a contrary intention is expressly menifested in the repealing provision of the new Statute. It is however, contended that in Section 32(2) (i) of the Amending Act of 1999 what is saved is 'any proceeding for revision which had been finally disposed of.' But that does not mean that any Revision Application which is filed and/or pending for admission or is already admitted, is not saved. In this connection, it is necessary to refer to the judgment of this Court in the case of Palitana Nagarpalika vs. Arisa Bhavan Jain Dharamshala (1979) 20 GLR 24, wherein it is observed that by way of abundant caution and despite there being on the statute an Act like the Bombay General Clauses Act, the legislature, as the recent trend discloses, made specific provisions for certain things to be saved. We cannot jump to the conclusion therefrom that whatever is not specifically saved in those saving provisions in those repealing Act of necessity, is intended not to be saved. From a positive set of circumstances, this sort of negative conclusion cannot be drawn. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy

them. The Court cannot, therefore, subscribe to the broad propostion that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section -6 wold be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a sving clause is by itself not material. This Court has lastly observed that enumeration of various items saved is not in any way suggestive of the legislature's intention to make the list exhaustive.

10. Keeping in mind the above observations made by this Court in the case of Palitana Nagarpalika vs. Arisa Bhuvan Jain Dharamshalal (supra), if we examine the Repeal and Savings provisions contained in Section 32 of the Amendment Act of 1999, it appears that Section 6 of the General Clauses Act applies to all clauses (a) to (u) of sub-section 2 of Section 32 of the Amendment Act of 1999. A close scrutiny of all these clauses would show that in all these clauses, except clause (i), what is sought to be saved is the orders passed in or steps taken in pending suit or proceedings on 1.7.2002 and which are to be disposed of in accordance with original relevant provisions of Civil Procedure Code as they stood before amendment. However, if we look at the clause(i) of Sub-section 2 of Section 32 of the Amending Act of 1999, the only saving is that proceedings for revisions which are finally disposed of shall not be affected by the amendment to Section 115 of the Civil Procedure Code. No other right of either of the parties or power of the Court is saved with reference to pending revision applications. As a matter of fact, this section clearly and of necesity implies that all the proceedings pending before the High COurt and which are not finally disposed of are to be governed by the amended provisions contained in Section 115 of the Civil Procedure Code. The power of the High Court to revise the impugned order under Section 115 of the Civil Procedure Code is now governed by the amended section 115 of the Code and the High Court can interfere with such order only when such

interference either one way or the other, would finally dispose of the suit or other proceedings in the trial court. In this view of the matter and after having considered all the relevant provisions of the Amendment Act of 1999, more particularly Repeal and Savings Provisions contained in Section 32 of the said Act, I am of the view that clause (i) of Sub-section (2) of Section 32 of the Amendment Act of 1999 clearly indicates a different intentin and what is saved is only any proceeding for revision which had been finally disposed of on 1.7.2002, meaning thereby any proceeding for revision which is filed and/or pending for admission or is already admitted, is not saved."

Even the Bombay High Court has also taken the same view in the case of Rajabhau, S/o. Mahadeorao Rahate vs. Dinkar, S/o Shantaram Ingole,(Supra) and after quoting the passage of the decision of the Hon'ble Supreme Court in the case of Kolhapur Canesugar Works Ltd. and another vs. Union of India and others - AIR 2000 SC 811 it is held that the provisions of Section 6 of the General Clauses Act are not attracted in the present case for the reason that there is no substantive vested right in a litigant to seek revision under Section 115 of the Code of Civil Procedure by the High Court and in the absence of any saving specifically made, it will have to be held that the provisions as amended by the Amending Act of 1999 shall apply to pending revisions also.

19. An appeal and revision cannot be equated on the same footing as moving to the High Court for exercise of jurisdiction under Section 115 of the Code of Civil Procedure is not a vested right. The Hon'ble Supreme Court, in the case of Smt. Gangabhai v. Vijaykumar and others - AIR 1974 SC 1126 has observed the basic distinction between the right of statute and right of appeal. These observations read as under:

"There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute,one may, at one's peril, bring a suit of one's choice. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of

law. That explains why the right of appeal is described as a creature of statute."

On the basis of these observations, the Bombay High Court has come to the conclusion that the right of revision cannot be said to be existing in the person under Section 115 of the Code of Civil Procedure for there is not even a mention of any such application maintained at the instance of the applicant much less it can be called a right. A right must have the clear authority of law. Such authority is lacking under Section 115 and, therefore, there is no right in a litigant to invoke Section 115 as a matter of right. That being the situation, the provisions of Section 6 of the General Clauses Act have no application to the issue in this case.

20. As far as decisions cited by the learned Senior Advocate, Mr. DD Vyas for the petitioner and by Mr. Yatin Soni, as an intervener, are concerned, they are distinguishable and are not applicable to the facts of the present case. One of the principles laid down by the Hon'ble Supreme Court in the case of Garikapati v. Subbiah Choudhry - AIR 1957 SC 540 (Supra) is that "This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise." Here, in the present case, this Court as well as Bombay High Court have taken the view that Section 32(2)(i) of the Amendment Act of 1999 contains different intention of the legislatures and any proceeding which is not finally disposed of on 1.7.2002 is not saved, meaning thereby, all revisions which are pending as on 1.7.2002 and which are filed after 1.7.2002 are not maintainable. As far as decision of the Hon'ble Supreme Court in the case of Shankar Ramchandra Abhyankar vs. Krishnaji Dattatraya Bapat (Supra) is concerned, it is specifically held in that case that Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction. After amendment in Section 115 of the Code, this jurisdiction is further circumscribed by the fact that by varying or reversing any order made, or any order deciding an issue, in the course of a suit or other proceedings, the High Court decides the issue in favour of the party applying for revision which would result into final disposal of the suit or other proceedings. Even otherwise, the Hon'ble Supreme Court, in its subsequent decision in the case of Smt. Gangabhai vs.Vijaykumar and others (Supra) has held that the right of appeal inheres in no one and therefore an appeal for its maintainability must have the

clean authority of law. This would equally apply to the Revision and there is no authority of law to maintain the revision after 1.7.2002, except it falls within the exception carved out in the proviso to Section 115(1) of the Code. The learned Advocate Mr. Yatin Soni's arguments that once the revisions are admitted, the parties should not be asked to relegate the alternative remedy do not have any force, in view of the fact that the amendment to Section 115 of the Code is made effective from 1.7.2002 and thereby the revisions are held to be not maintainable.

21. In view of the aforesaid legal position, I am of the view that the present CRA is not maintainable and that there is no need to take any different view or to refer the matter to the Division Bench as the legislative intention is very clear and there is no reason not to construe such different intention as envisaged in Section 6 of the General Clauses Act. Since this Court has threadbare discussed all the aspects of the matter in the aforesaid two decisions and now that view has found further support from the decision of the Bombay High Court, the present CRA is rejected.

22. It is however made clear that the interim relief which was granted by this Court till 1st October 2002 was thereafter vacated on 1st October 2002. However, a statement was made by Mrs. KA Mehta that she will not alter the situation as it prevailed as on 1.10.2002 with regard to the suit property till 4.10.2002 and the said statement was continued till this date. I, therefore, extend the interim relief which was granted by this Court earlier and the same shall continue by virtue of the statement made by Mrs. Mehta for a further period of four weeks from today so as to enable the petitioner to approach the Hon'ble Supreme Court and to obtain appropriate order. With these observations, this Civil Revision Application is rejected. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]